

Committee: OVERVIEW AND SCRUTINY	Date: 6 May 2008	Classification: Unrestricted	Report No.	Agenda Item No.
Report of: Assistant Chief Executive Originating Officer(s): Amanda Thompson Team Leader, Democratic Services			Title: Cabinet Decision Called-in: Disposal of Land – 10 Blackchurch Lane E1 Wards: Whitechapel	

1. SUMMARY

- 1.1 The attached report of the Corporate Director, Development and Renewal was considered by the Cabinet on 2 April 2008 and has been “Called In” by Councillors Alex Heslop, Ahmed Omer, Alibor Choudhury, Shahed Ali and Marc Francis for further consideration. This is in accordance with the provisions of Part Four of the Council’s Constitution.

2. RECOMMENDATION

- 2.1 That the Committee consider the contents of the attached report, review the Cabinet’s provisional decisions arising and decide whether to accept them or refer the matter back to Cabinet with proposals, together with reasons.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

Brief description of “background paper”

Cabinet report

Name and telephone number of holder
and address where open to inspection

Amanda Thompson
02073644651

3. THE CABINET'S PROVISIONAL DECISION

3.1 The Cabinet after considering the attached report provisionally agreed:-

- 1) That the Corporate Director Development and Renewal explore, with Registered Social Landlords currently operating in the Borough, their acquisition of the site 10 Backchurch Lane E1, on long leasehold terms, from the Authority;
- 2) That in working up development proposals, for the site at 10 Backchurch Lane E1, Registered Social Landlords:
 - (a) Endeavour to engage, at an early stage, with the current lessees of the above site in relation to the incorporation of workspace within the development scheme;
 - (b) Seek to incorporate environmental improvements within the development scheme.
- 3) That the Corporate Director Development and Renewal be instructed to report progress, in respect of Resolutions 1 and 2 above, to the Cabinet within six months.

4. REASONS FOR THE 'CALL IN'

4.1 The Call-in requisition signed by the five Councillors listed above gives the following reasons for the Call-in:

- 1) The original Cabinet decision to dispose (March 2004) was taken without a competitive tendering process and without consultation with local interested parties and on the basis of a speculative development proposal in respect of which no planning application had been made.

Since March 2004 the Council has adopted new disposal protocols and the intended purchaser of the land has not made the required progress with the planning proposal upon which the disposal was contingent. It was therefore correct for the Cabinet to revisit the March 2004 decision and consider the disposal afresh.

However, the Cabinet meeting on 2nd April 2008 did not consider the *whole* issue of disposal afresh. Only two proposals were put before the meeting, namely:

- disposal by informal tender on the basis of a planning statement which would appear to have been drafted to accommodate the proposals of the original intended purchaser;

and

- disposal to the original prospective purchaser on the basis of a revised valuation.

The Cabinet was therefore not able to give due consideration to all options for disposal of the site and was unduly influenced by the decision of March 2004 to dispose of the site in respect of a development proposal which has made no progress in **four** years.

The original decision of March 2004 was not based on consideration of different possible uses of the site, including the possible disposal of it to the existing tenants – the longstanding leaseholders, AND Association, but went forward following discussion with only one potential purchaser.

By restricting the terms on which Cabinet revisited the March 2004 decision, the Cabinet has again failed to consider the whole issue of disposal. The flaw of the 2004 decision has been carried forward and has unduly influenced the April 2008 decision which should have been more objective.

- 2) In attempting to take a decision on disposal of the site without consideration of different possible uses of the site, including the possible disposal of it to the existing tenant, the Cabinet is restricting the range of possible developments of the site which are under consideration.

Further, the Council does not appear to have carried out consultation on the planning brief which it took into consideration when making its decision (no information is provided on what policies, input or discussion the author of the planning statement took into account when drafting it).

By agreeing to move towards disposal on the basis of the planning statement submitted, the Cabinet is preventing the local community and/or interested parties from raising any objections they may have effectively (once the stage of consulting on a planning application is reached, the land may already have been sold and consideration of any alternative use would be prohibited).

- 3) However, having restricted itself to considering disposal of the site on the basis of two proposals only (as outlined above), the Cabinet proceeded to agree moving towards disposal on the basis of a third option, introduced verbally by the Chair at the conclusion of the discussion. Thus:

- there was no Cabinet discussion on this option;
- the verbal proposal provided for the Head of Service to consult with possible purchasers of the site with a view to working up a new proposal, but this was again too restrictive in that only RSLs operating in Tower Hamlets were to be considered possible purchasers; thus no alternative possible purchasers were considered and nor was the option of alternative disposal;

- there is no provision in current policies for disposal of land to be restricted to RSLs currently operating in Tower Hamlets, and it is invidious that important and significant policy over such a major resource should be made “on the hoof” by way of a verbal proposal made without notice and without discussion, particularly as that policy may be used as a precedent in future land disposals.
- 4) The verbal proposal which was adopted by the Cabinet was extremely vague and gave insufficient guidance to officers to proceed with negotiations and did not require officers to consult the local community or interested parties. Further, no guidance was given to officers on whether to follow the lines of the current development proposal, save that there is a planning brief already in place (designed to facilitate the initial prospective purchasers’ proposals rather than consider the site or Council policies objectively) and it must therefore be assumed that the planning brief will be used for a purpose for which it was not originally intended. The current development proposal provides only 22 properties for rent to the Borough (significantly below the Council’s target of 50% of affordable homes for rent) and this provision would be at the expense of an unknown number of local jobs: providing housing and employment are both priorities of the Council, and no provision has been made for a procedure to assess the competing demands of the site.
- 5) Undue leeway at the meeting was given to the representations made by the Gateway Housing Association and its partners Tower Hamlets Environment Trust, who qualify to be possible purchasers of the site under the Cabinet decision, such that an objective decision could not be reached or so that there could be doubt that the decision would be seen as objective, namely:
- (a) the representative of Gateway Housing Association on the deputation to the Cabinet was permitted to make verbal references to work undertaken in progressing the original planning proposal from March 2004 to date without being requested to provide any documentary evidence to confirm these assertions; and in particular the representative’s verbal statement that agreements were in place that all land would be made available to the Housing Association and its partners for their proposed development save only for one proviso, namely that the Council made its land available too was accepted without documentary evidence; accepting such information on the basis of a verbal assertion only is not tantamount to exercising due diligence over disposal of capital assets;
 - (b) the representative of Gateway Housing Association on the deputation to the Cabinet was permitted to make verbal references to work undertaken in progressing the original planning proposal from March 2004 to date without being requested to provide any documentary evidence to confirm these assertions; and in particular the representative’s verbal statement that agreements were in place that all land would be made available to the Housing Association and its partners for their proposed development save only for one proviso, namely that the Council made its land available too was accepted without documentary evidence; accepting

such information on the basis of a verbal assertion only is not tantamount to exercising due diligence over disposal of capital assets;

- (c) the representative of Gateway Housing Association on the deputation to the Cabinet was not adequately questioned about why further progress had not been made to date on a development which had initially been proposed in early 2004 and the Cabinet was therefore not able to take into account the viability of this proposed development;
 - (d) the representative of Gateway Housing Association on the deputation to the Cabinet was permitted to draw to the Cabinet's attention his role within the Community Partnership and the fact that he had represented the Council in discussion with the Audit Commission earlier that day;
 - (e) the representative of Gateway Housing Association on the deputation to the Cabinet was permitted to draw to the Cabinet's attention the fact that it (and its predecessor organisation, Bethnal Green & Victoria Park Housing Association) had to date expended the sum of approximately £300,000 on progressing the planning proposal since 2004, which money would be wasted if the project were not to go ahead, with a sum of a similar order being expended by its partners, Tower Hamlets Environmental Trust; the decision to incur speculative expenditure of this sum was incurred by the partners, which have their own regulatory systems for agreeing speculative expenditure, and the Council cannot be held responsible for the partners' financial probity or potentially wasteful use of funds; the Cabinet cannot correctly take third party expenditure into account when managing its own assets;
 - (f) no report was made to the Cabinet to confirm that no Council resources (financial, human or otherwise) have been expended in pursuing this speculative project, so Cabinet members could not take into account whether Council funds had been spent on this project.
- 6) Inadequate facility has been afforded to the local community and/or other interested parties to put forward alternative plans for disposal or other continued use of the site and the Cabinet was therefore denied the opportunity to extend the brief to officers, agreed on the basis of the verbal proposal, more widely to consider other acceptable futures for the site.

While one deputation was allowed to the Cabinet meeting on 2nd April (from the existing tenants), this was a reactive deputation, able only to respond to documents tabled at the meeting and not requested to put forward alternative proposals.

Cabinet took its decision without due consideration of the Council's obligation under the terms of the tenants' lease.

The existing tenants received no formal notice that the matter was to be discussed at Cabinet and discovered this was to happen by chance days before the meeting. The existing tenants were therefore not afforded the opportunity (unlike Gateway HA / ET) to present to Cabinet proposals which

they had been developing with their own partners over previous months.

In particular, the existing tenants at 10 Backchurch Lane have not been invited to submit proposals for developing the site and the neighbouring tenants have not been invited to submit any comments on proposed developments for the immediate area. As the site of the intended development (which the disposal of this Council asset may be intended to facilitate) will affect a number of local businesses, local residents who work in those businesses and local businesses and projects which are in turn serviced by those businesses, the Cabinet has not taken the views of a significant element of the local community into account and has not exercised due diligence in exploring possible uses of the site to establish the best way forward.

5. ALTERNATIVE COURSE OF ACTION PROPOSED:

5.1 The Councillors submitting the Call-in requisition have proposed the following alternative course of action:

- 1) That Officers be instructed to produce a report to Cabinet, with documentary evidence, showing progress made by the Gateway HA / Environment Trust in acquiring the other component parts of the whole development site (since the original Cabinet decision of March 2004), in order to better assess the viability of their development proposal.
- 2) That LBTH allow the sitting tenants, i.e the leaseholders, AND Association, a period of 6 - 9 months to finalise the development of their own alternative proposals for the regeneration of the land, based on the Council's own requirements in terms of the Local Development Framework. The sitting tenants' proposals could then be considered alongside those submitted by RSLs or anyone else.
- 3) That LBTH opens the informal tendering process to include the sitting tenants to present alternative proposals to be considered, in particular the establishment of a "Community Land Trust / Co-operative Consortium" and/or other models based on the principles of co-operation and community-led regeneration.
- 4) That Officers be instructed to provide full disclosure of all relevant information and documents to the sitting tenants and to provide the sitting tenants with meaningful help and assistance in developing an alternative proposal for Cabinet consideration.
- 5) That Officers report back on progress to Cabinet within six months.

6. CONSIDERATION OF THE “CALL IN”

6.1 The following procedure is to be followed for consideration of the “Call In”:

- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions.
- (b) Response from the Lead Member/officers followed by questions.
- (c) General debate followed by decision.

N.B. – In accordance with the Overview and Scrutiny Committee Protocols and Guidance adopted by the Committee at its meeting on 6 June, 2007, any Member(s) who presents the “Call In” is not eligible to participate in the general debate.

6.2 It is open to the Committee to either resolve to take no action which would have the effect of endorsing the original Cabinet decisions, or the Committee could refer the matter back to the Cabinet for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.